IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 7129 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SWASTIK PESTICIDES LTD. & 3 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR.P B SHARMA for Applicant(s) : 1 - 4.
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/07/2007

ORAL JUDGMENT

1. By way of this application under Section 482 of the Criminal Procedure Code, the petitioner –

original accused Nos. 3 to 6 have prayed for an appropriate order to quash and set side the complaint being Criminal Case No. 652 of 2006 filed and pending in the Court of Chief Judicial Magistrate, Himatnagar by which the respondent No.2 – original complainant filed complaint for the offences punishable under Sections 3(k)(1), 17(1)(a) and 18(1)(c) of the Insecticides Act, 1968.

2. A criminal complaint being criminal case being No. 652 of 2006, is filed by respondent No.2 – herein Agricultural Inspector, Himatnagar against the petitioner and others in the Court of Chief Judicial Magistrate, Himatnagar for the offences punishable under Sections 3(k)(1), 17(1)(a) and 18(1)(c) of the Insecticides Act, 1968. Accused Nos. 1 to 3 are the manufacturers and marketers of various categories of insecticides and pesticides. Accused Nos. 4 and 6 are the responsible persons of the aforesaid original accused Nos. 1 to 3. The original complainant drawn sample of Phorate from accused No.1 M/s. Ankur Seeds and Pesticides on 04.08.2005. The said drawn sample was sent for analysis at the Government Analytical Laboratory and as per its report, the said sample was

alleged misbranded. The original complainant supplied a copy of Government Test Analysis Report along with show cause Notice on 15.09.2005. It is the case on behalf of the petitioners that *vide* letter dated 20.09.2005 within 28 days of the said show cause notice that controverted the said Government Analyis Report and requested for retesting as per the provisions of Section 24(3) of the Insecticides Act, 1968 (for short “the Act, 1968”).

3. Thereafter, Agricultural Inspector intimated the petitioners that the petitioners have no right to get the sample retested and it was informed to the petitioners that if they want to get sample retested, they have to approach learned Chief Judicial Magistrate, Himatnagar before the period of expiry of Shelf Life of Sample. That thereafter, impugned complaint came to be filed on 14.02.2006. The petitioners appeared before the learned Chief Judicial Magistrate and submitted an application for retesting on 22.08.2006 and as per the direction of the learned trial Court, made further application on 18.11.2006. It is the case on behalf of the petitioners that despite three retesting applications filed by the

applicants, the Court has failed to proceed for retesting as per the provisions of the Act, as according to the petitioners - accused Nos. 3 to 6, the provisions as required under Section 22(6) and 24(4) of the Act has not been complied with and followed and therefore, the complaint was itself not maintainable. Therefore, the petitioners submitted an application for dropping of proceedings on 05.12.2006 and after giving opportunity to all concerned, the learned trial Court dismissed the said application for dropping proceedings for the reasons stated in the said order. Hence, petitioners – original accused Nos. 3 to 6 have preferred the present application under Section 482 of the Criminal Procedure Code to quash and set aside aforesaid complaint.

4. Mr.Sharma, learned Advocate appearing on behalf of the petitioners submitted that there is non compliance of statutory provisions of Section 22(6) and 24(4) of the Act, and therefore, impugned complaint was not maintainable, and same requires to be quashed and set aside. It is further submitted by him that it was mandatory duty of the Officer to send samples to Central Laboratory as required under

Section 22(6) of the Act as the application was submitted within period of 28 days. It is submitted that in fact second sample has not been drawn and therefore, as there is breach of mandatory provisions, impugned complaint requires to be quashed and set aside. It is further submitted that even three applications were submitted by the petitioners for sending the samples for retesting. However, the learned trial Court did not pass any order and/or did not send the samples for retesting. Therefore, impugned complaint requires to be quashed and set aside. It is also submitted that as there is breach of mandatory provisions of Section 22(6) of the Act and as the applicants are deprived of their constitutional right of retesting as provided under Section 24(4) of the Act, it is requested to quash the complaint.

5. Learned Advocate appearing on behalf of the petitioner has relied upon some judgments in support of his submissions that the provisions under Section 22(6) and Section 24 are mandatory and for non-compliance their can be acquittal.

6. On the other hand, Mr.R.C.Kodekar, learned

Additional Public Prosecutor while opposing the present application has submitted that the sample was not drawn from the applicants but was drawn from the original accused No.1 and so far as section 22(6) of the Act is concerned, right is conferred upon the persons for retesting from whom the sample is drawn and the original accused Nos. 1 and 2 for whom sample was drawn had not submitted any application within stipulated time and therefore, there is no breach of Section 22(6) of the Act as alleged. It is further submitted by learned Additional Public Prosecutor that the applications submitted by the applicant herein under Section 24(4) of the Act for retesting and sending to the Central Insecticides Laboratory was not pressed by the applicants. Under the circumstances, they have waived their right to get samples retested and the learned trial Court has rightly rejected the application submitted by the applicants for dropping the proceedings.

7. It is further submitted that even the order passed by the learned Chief Judicial Magistrate dated 07.04.2007 rejecting the application of the petitioners for dropping the proceedings has not been

challenged by the applicants in the present proceedings. Therefore, in absence of challenge to the order passed by the learned Chief Judicial Magistrate in rejecting the application for dropping proceedings, the present application cannot be entertained to quash the complaint. Therefore, it is requested to dismiss the present application.

8. Heard the learned Advocates appearing on behalf of the respective parties.

9. At the outset it is required to be noted and admittedly the sample was drawn from the original accused Nos. 1 and 2 and not from the applicants – herein original accused Nos. 3 to 6. Now considering Section 22(6) of the Act it confers right in favour of the persons from whom sample is drawn and that too within 28 days. As observed by the learned Chief Judicial Magistrate in the order dated 07.04.2007 while rejecting the application of the petitioners for dropping the proceedings (which is not challenged), original accused Nos. 1 and 2 from whom sample was drawn had not submitted application for retesting within stipulated time and have not exercised their right for retesting. It is required to be noted that

the petitioners have also submitted an application for retesting and sending it to the Central Insecticides Laboratory as provided under Section 22(4) of the Act, however, the same was not pressed by the applicants. It is the contention on behalf of the applicants that as sample was not before the trial Court, they did not press the application. It is required to be noted that nothing is on record to support the above submissions that for the reasons stated above they did not press the application for retesting.

10. Learned Chief Judicial Magistrate has specifically observed that by not pressing the application dated 18.11.2006 below Exh. 8 which was submitted under Section 22(4) of the Act for sending the sample to the Central Insecticides Laboratory for retesting, the applicants have waived their right of retesting. Now considering above, the application of the petitioners to quash and set aside the complaint on the ground that there is breach of mandatory provisions of Section 22(6) and 24(4) of the Act, cannot be accepted. It is required to be noted at this stage that before even filing complaint, the Agricultural Inspector has informed the petitioners

and others to move an appropriate application for retesting. However, no action has been taken by the petitioners and others within the time. Now considering the above facts and circumstances of the case, it cannot be said that the complaint is vexatious which requires to be dismissed without any trial.

11. In the above facts and circumstances of the case, whether there is any breach of mandatory provisions of Sections 22(6) and 24(4) of the Act or not, is required to be considered on appreciation of the evidence, more particularly, considering the facts stated herein above. Under the circumstances, the judgments which are stated at the Bar on behalf of the petitioners are required to be considered at the time of trial. The questions which are raised in the present application are also required to be considered on appreciation of the evidence at the time of trial as they are all defences, more particularly, in view of the facts stated above. It is also required to be noted that the petitioners submitted an application before the learned Chief Judicial Magistrate for dropping the proceedings which is dismissed by the

learned Chief Judicial Magistrate by order dated 07.04.2007 by detail speaking order. However, the same is not challenged by the petitioners. Considering the facts and circumstances of the case as stated above, the impugned complaint is not required to be quashed and set aside in exercise of powers under Section 482 of the Cr.P.C.

12. For the reasons stated above, the petition fails requires to be dismissed and accordingly it is dismissed. The prayer of the petitioner to quash and set aside the complaint is hereby rejected. Notice discharged.

[M.R.Shah, J.]

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